



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52, 60, 61, 63, 70, 271, and 281**

**[EPA-R08-OAR-2018-0616 EPA-R08-OAR-2018-0299 EPA-R08-RCRA-2018-0084 and EPA-R08-UST-2018-0728; FRL9990-24]**

### **Approvals Concerning Revisions to North Dakota's Environmental Protection Programs; Delay of Effective Dates**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; delay of effective dates.

**SUMMARY:** Due to unforeseen delays resulting from the lapse in appropriations for the Environmental Protection Agency (EPA), the EPA's final approvals concerning revisions to North Dakota's environmental protection programs that have the effect of transferring authority from the North Dakota Department of Health (NDDH) to the newly-created North Dakota Department of Environmental Quality (NDDEQ) are delayed until April 30, 2019. This action delays the effective dates of the four relevant rules, published in the *Federal Register* between December 19, 2018 and February 11, 2019.

**DATES:** The rule is effective April 30, 2019. The effective dates of the rules published at 83 FR 65101 (December 19, 2018), 83 FR 65104 (December 19, 2018), 84 FR 1610 (February 5, 2019), and 84 FR 3108 (February 11, 2019), are delayed until April 30, 2019. See **SUPPLEMENTARY INFORMATION** for details.

**FOR FURTHER INFORMATION CONTACT:** Mai Denawa, Office of Regional Counsel, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129; telephone number: 303-312-6514; email address: [denawa.mai@epa.gov](mailto:denawa.mai@epa.gov).

**SUPPLEMENTARY INFORMATION:** Due to unforeseen delays that the lapse in appropriations has caused, the effective dates for the rules listed in the table below are revised to April 30, 2019. These actions relate to the EPA’s final approvals concerning revisions to North Dakota’s environmental protection programs that have the effect of transferring authority to implement and enforce previously EPA-authorized/approved/delegated/codified environmental protection programs from the North Dakota Department of Health (NDDH) to the newly-created North Dakota Department of Environmental Quality (NDDEQ). However, because EPA has not issued final approvals for all the relevant environmental programs to the NDDEQ, EPA is delaying the effective dates of the approvals that have been finalized to allow for the transfer of all the programs to be synchronized, allowing them to become effective without creating uncertainty in the State entity that has EPA approval to implement North Dakota’s environmental programs.

The North Dakota legislature enacted North Dakota Senate Bill 2327 (S.L. 2017, ch. 199, Section 1) in 2017 to create the new NDDEQ. This law requires that the transfer of authority from NDDH to NDDEQ will only occur if the State has obtained all approvals from EPA to ensure that the State will continue to meet federal requirements for the respective environmental programs. For the programs described in the below table (as well as the underground injection control program under the Safe Drinking Water Act) that require notice and comment in the *Federal Register* as part of the approval process for the revision, the State is relying on the date that EPA signs the final notice as the required “approval” under S.L. 2017, ch. 1. 199, Section 1. Once EPA approves

revisions to all relevant environmental programs, the State intends to take the necessary additional steps as specified in S.L. 2017, ch. 199, Section 1, to ensure that the transfer in authority would be effective under State law. EPA sought to ensure that NDDEQ rules and the NDDEQ would become effective under State law prior to the effective date of EPA's approvals. Otherwise, EPA would in effect approve an agency that did not yet exist. Additionally, to prevent a gap in an EPA-approved program while the transfer occurs for the programs in the below table, our final notices noted that unless and until the NDDEQ rules and agency become fully effective under federal law, for purposes of federal law the EPA recognizes the State's program as currently approved under NDDH. See 84 FR 1610 (February 5, 2019); 84 FR 3108 (February 11, 2019); 83 FR 65101 (December 19, 2018); 83 FR 65104 (December 19, 2018). Based on this process and our subsequent conversations with the State, EPA had initially determined that our approval of the revised programs in the below table should become fully effective under federal law on March 15, 2019.

However, the lapse in appropriations has caused unforeseen delays in completing issuance of the remaining necessary approvals. Specifically, the underground injection control (UIC) program under the SDWA is still pending final rule signature and review, though a proposed rule has been published and the comment period has closed. (83 FR 62536, December 4, 2018). EPA is delaying the effective date of the approvals in the below table because the March 15 effective date is no longer feasible.

<b>Federal Register Citation</b>	<b>CFR part affected</b>	<b>Title</b>	<b>Original Effective Date</b>	<b>New Effective Date</b>
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84 FR 1610, February 5, 2019 9	Part 52	Approval and Promulgation of Implementation Plans; North Dakota; Revisions to Infrastructure Requirements for All National Ambient Air Quality Standards; Carbon Monoxide (CO); Lead (Pb); Nitrogen Dioxide (NO <sub>2</sub> ); Ozone (O <sub>3</sub> ); Particle Pollution (PM <sub>2.5</sub> , PM <sub>10</sub> ); Sulfur Dioxide (SO <sub>2</sub> ); Recodification	3/15/2019	4/30/2019
84 FR 3108, February 11, 2019	Parts 60, 61, 63, 70	Approval of Recodification and Revisions to State Air Pollution Control Rules; North Dakota; Interim Approval of Title V Program Recodification and Revisions; Approval of Recodification and Revisions to State Programs and Delegation of Authority To Implement and Enforce Clean Air Act Sections 111 and 112 Standards and Requirements	3/15/2019	4/30/2019
83 FR 65101, December 19, 2018	Part 271	North Dakota: Final Authorization of State Hazardous Waste Management Program Revisions	3/15/2019	4/30/2019
83 FR 65104, December 19, 2018	Part 281	North Dakota: Final Approval of State Underground Storage Tank Program Revisions	3/15/2019	4/30/2019

The Agency's implementation of this action without opportunity for public comment is based on the good cause exception in 5 U.S.C. 553(b)(B). Section 553(b)(B) of the Administrative Procedure Act provides that, when an agency for good cause finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest," an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule

final without prior proposal and opportunity for comment because notice and public procedure are impracticable and unnecessary. This rule will extend the effective date of the final EPA approvals to ensure that the timing of these approvals and DEQ's transfer comports with the above-described State and EPA requirements. Issuing this extension in final form is urgent because without it, the EPA approvals would go into effect well in advance of the time that the State transfer of authority occurs. This would create uncertainty about which entity would be implementing North Dakota's environmental programs during the period between March 15 and North Dakota's transfer of authority. The urgency arises because the lapse in appropriations caused delays that were outside EPA's control. Thus, prior notice and comment was impracticable.

Further, notice and comment are unnecessary because the effect of this rule is inconsequential to the regulated communities' rights and responsibilities under the various programs covered by the approvals, as it does not significantly change the substantive obligations that regulated entities must comply with. Rather, this notice affects the timing of which entity—the NDDH or the NDDEQ—will implement North Dakota's environmental programs. As described in our notices, we found that the NDDEQ will have adequate resources to implement these programs. Thus, there should not be any consequences to the regulated community in terms of changed times to, for example, process permit applications.

In addition, it is unnecessary to provide an additional opportunity for comment as the reasoning for setting an effective date on the basis of when the State transfer of

authority would occur was fully described in the approval actions and did not receive any public comment. Although we are extending the effective date to April 30, 2019, the reasoning for setting an effective date in conjunction with the State transfer of authority continues to apply. The Agency therefore finds that there is good cause under 5 U.S.C. 553(b)(B) to forego prior notice and comment.

This action is effective immediately upon publication under 5 U.S.C. 553(d). Section 553(d) of the Administrative Procedure Act (“APA”) provides that final rules shall not become effective until 30 days after publication in the Federal Register, “except . . . as otherwise provided by the agency for good cause,” among other exceptions. The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *Gavrilovic*, 551 F.2d at 1105. There is a necessity for immediate implementation of this rule because as described above—both due to the State processes that are statutorily-prescribed, and the delays in completing EPA’s approvals due to the lapse in appropriations—EPA’s failure to amend the effective date would create uncertainty in the State entity that would implement the State’s environmental programs on or after March 15. If the March 15 effective date was not amended, NDDEQ would become the

EPA-approved entity to implement the programs described in the table above, yet NDDEQ would not yet exist. Further, as previously discussed, this action will affect the timing of which State entity will implement North Dakota's environmental programs. Accordingly, this final rule will not require affected persons to take action or change behavior to come into compliance within the next 30 days. Furthermore, EPA believes that making the rule effective upon publication will allow the EPA to recognize the authorized/approved/delegated/codified program under DEQ as applicable law without further delay. For these reasons, the EPA finds that good cause exists under section 553(d)(3) to make this rule effective immediately upon publication.

## **List of Subjects**

### **40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

### **40 CFR Part 61**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, National emission standards for hazardous air pollutants, Delegation of authority.

### **40 CFR Part 70**

Environmental protection, Air pollution control, Intergovernmental relations, Operating permit program, State acid rain program, Title V.

Dated: February 26, 2019.

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**Debra H. Thomas,**  
**Acting Regional Administrator.**



For the reasons set forth in the preamble, EPA amends [40 CFR](#) parts 52, 61, and 70 as follows:

## **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **§ 52.1820 [AMENDED]**

2. In §52.1820(c), remove “3/15/2019” everywhere it appears and add in its place “4/30/2019”.

## **PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

3. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **§ 61.04 [AMENDED]**

4. In § 61.04(c)(8), remove “March 15, 2019” and add in its place “April 30, 2019” and remove “December 17, 2018” and add in its place “February 26, 2019”.

## **PART 70—STATE OPERATING PERMIT PROGRAMS**

5. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

### **Appendix A to Part 70 [AMENDED]**

6. In appendix A to part 70, the entry for North Dakota paragraph (d), remove “March 15, 2019” and add in its place “April 30, 2019” and remove “March 19, 2020” and add in its place “May 1, 2020”.

